



ENVIRONMENTAL LAW FOUNDATION

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April 11, 2007

Via Electronic Mail (mmata@waterboards.ca.gov)

Michelle Mata
San Diego Regional Water Quality Control Board
9174 Sky Park Court, Suite 100
San Diego, CA 92123

**Re: Tentative Order R9-2007-0046
Waste Discharge Requirements for Oak Tree Ranch, Inc. Wastewater
Treatment and Disposal Facility, San Diego County**

Dear Ms. Mata:

On behalf of the Environmental Law Foundation, a non-profit, public interest organization dedicated to protecting water quality throughout California, I would like to thank you for the opportunity to submit comments on Tentative Order R9-2007-0046 authorizing the discharge of waste by the Oak Tree Ranch Private Residential Community. It is our hope that this discharge will not degrade groundwater in and around the facility—a requirement under California's antidegradation policy, which requires that groundwater quality be maintained. (*See* State Water Resources Control Board Resolution 68-16 (Oct. 24, 1968).) As discussed further below, however, we believe that the Tentative Order does not comply with that policy. Accordingly, we ask the Regional Board to revise the Tentative Order so as to ensure that no degradation will occur as a result of this discharge.

A. California's Antidegradation Policy

The State Water Resources Control Board first announced a policy to maintain existing water quality in 1968 in Resolution 68-16. In that resolution, the State Board announced its intent that water quality that exceeds water quality standards "shall be maintained to the maximum extent possible." (State Water Resources Control Board, Resolution 68-16 (Oct. 24, 1968).) Accordingly, the Board ordered that

Whenever the existing quality of water is better than the quality established in policies as of the date on which such policies become effective, such existing high quality will be maintained until it has been demonstrated to the State that any change will be consistent with maximum benefit to the people of the State, will not unreasonably affect present and anticipated beneficial use of

such water and will not result in water quality less than that prescribed in the policies.

(*Id.*) This policy applies equally to surface as well as to ground water.

To implement this policy the State Board mandated that

Any activity which produces or may produce a waste or increased volume or concentration of waste and which discharges or proposes to discharge to existing high quality waters will be required to meet waste discharge requirements which will result in the best practicable treatment or control of the discharge necessary to assure that (a) a pollution or nuisance will not occur and (b) the highest water quality consistent with maximum benefit to the people of the State will be maintained.

(*Id.*) These requirements must be met *prior* to any action by the Regional Board that might impact groundwater quality.

B. The Tentative Order Impermissibly Allows Groundwater Degradation in Violation of California's Antidegradation Policy

Despite the requirements under the state's antidegradation policy that groundwater degradation be allowed in only limited circumstances, the Tentative Order authorizes such degradation without much concern for making first any of the necessary findings under the state's antidegradation policy. Thus, the Tentative Order allows the discharge of waste with Total Dissolved Solids (TDS) levels projected up to 680 mg/L despite the fact that TDS levels presently found in the groundwater underlying the facility average 418 mg/L.¹ (Finding 20.) Furthermore, it is not clear what other degradation the Tentative Order authorizes given that the Order only characterizes the ground water quality for TDS and nitrate. This, despite the fact that the state's antidegradation policy applies on a pollutant-by-pollutant basis and the discharge stream contains numerous other pollutants, including TSS, chloride, sulfate, and other pollutants that could easily degrade groundwater quality.

Given this degradation, one would expect the Tentative Order to include findings—with appropriate evidentiary support in the record—that the degradation is consistent with the maximum benefit to the state, that the Order employs the best practical treatment control, and that there are no other feasible alternatives. Indeed, it is not even clear that the Order could reasonably include such findings given that there are no requirements in the Order for the discharger to apply wastes in accordance with agronomic rates to ensure no further groundwater

¹ The Order in fact authorizes discharges including TDS levels up to 800 mg/L, well above background.

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degradation. This is especially critical given that the groundwater basin underlying the facility is already impaired by nitrate. (Finding 21.)

Without these findings, it is impossible to determine whether the Tentative Order actually complies with the state's antidegradation policy, which it must for the Regional Board to adopt it. The Tentative Order's implementation of the state's antidegradation policy, however, is woefully inadequate. Adopting the Tentative Order in its present state, therefore, would be patently arbitrary and capricious. (Cal. Code Civ. Proc. § 1094.5; *Topanga Assn. for a Scenic Community v. County of Los Angeles* (1974), 11 Cal. 3d 506, 515-16 (agency must make findings that "bridge the analytic gap between the raw evidence and ultimate decision or order"); *City of Rancho Palos Verdes v. City Council of Rolling Hills Estates* (1976), 59 Cal. App. 3d 869, 889) (holding city council resolution invalid due to lack of findings on "the sub-issues leading to the ultimate decision").

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Thank you for your time in considering these comments. If you have any questions, please do not hesitate to contact me. I look forward to working with you and the Regional Board to address these concerns.

Sincerely,



Dan Gildor